

EXHIBIT 9

In the Matter of

Case No.: 1:21-cv-08594-JHR

ROSATI

v.

LONG ISLAND RAILROAD, et al.

Deposition of Benjamin Gallup

Thursday, September 7, 2023



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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
-----X

STEVEN ROSATI, an individual,
Plaintiff,

-against-

Case No.:
1:21-cv-08594-JHR

LONG ISLAND RAILROAD,
METROPOLITAN TRANSIT AUTHORITY,
and PATRICK J. FOYE, individual,

Defendants.

-----X

September 7, 2023
2:14 p.m.

Examination of BENJAMIN GALLUP, held pursuant
to Notice, held via Zoom conference, before
Ruthayn Shalom, a shorthand Reporter and Notary
Public within and for the State of New York.

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2 A P P E A R A N C E S :

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24
25 ALSO PRESENT:

14 Jason D. Barnes, Esq. MTA
15 Helene Hechtkopf, Esq.
16 Priya Pasricha, Esq.

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2 IT IS HEREBY STIPULATED AND AGREED, by
3 and between the attorneys for the respective
4 parties hereto, that this examination may be
5 sworn to before any Notary Public.

6

7 IT IS FURTHER STIPULATED AND AGREED that
8 the sealing and filing of the said examination
9 shall be waived.

10

11 IT IS FURTHER STIPULATED AND AGREED that
12 all objections to questions except as to form
13 shall be reserved for trial.

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1 B. Gallup

2 B E N J A M I N G A L L U P, having
3 been first duly sworn by Ruthayn Shalom, a Notary
4 Public of the State of New York, and stating his
5 address as 93-02 Sutphin Boulevard, Jamaica,
6 New York 11434, was examined and testified as
7 follows:

8 EXAMINATION BY

9 MR. UHRICH:

10 Q Mr. Gallup, my name is Craig Uhrich. I'm
11 an attorney for Steven Rosati. I guess my first
12 question for you today is -- well go ahead and state
13 your name for the record.

14 A Benjamin Gallup.

15 Q How would you like me to refer to you
16 today?

17 A Ben is fine.

18 Q Wonderful. Have you ever been deposed
19 before, Ben?

20 A No, I have not.

21 Q Let me go over kind of the process. It's
22 a question and answer format. I will ask questions
23 for you to answer. Obviously, you have counsel
24 there who can object if they want to. Since we are
25 doing this remotely, sometimes issues come up where

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2 you can't hear me or can't read a document or
3 whatever. If that happens please let me know. Also
4 sometimes I just don't talk very well. If I say
5 something stupid and you don't understand, feel free
6 to let me know and I will try to rephrase.

7 The other thing since we are doing
8 this remotely is we have a court reporter. I will
9 try, and I would ask you to try as well, to let me
10 finish talking before you talk and vice versa so
11 that the court reporter can keep up with us.
12 Similarly, she will need you to answer orally rather
13 than head nods or head shakes because she can't
14 record those on her transcript.

15 A Okay.

16 Q The other thing I will tell you is as we
17 go along at any point you need a break let me know.
18 Usually what will happen if there is a question
19 pending, I will ask you to go ahead and answer the
20 question before we take a break. Otherwise any
21 reason you need a break let me know.

22 A Thank you.

23 Q Great. So let's start off are you
24 currently employed?

25 A Yes, I am.

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2 Q How are you employed?

3 A By the Long Island Railroad.

4 Q What is your position there?

5 A My current title is superintendent of
6 train service.

7 Q During the time that Mr. Rosati had
8 various disciplinary things going on, was that your
9 title at the time as well or has it changed since
10 then?

11 A It's changed since then. I believe at the
12 time it was lead transportation manager of onboard
13 revenue compliance.

14 Q Wonderful. Today when you talk about your
15 job, I will generally be talking about your job at
16 the time of the Rosati instance. If I want to know
17 something more current I will ask it that way.

18 A Okay.

19 Q So how long have you been with the
20 Railroad?

21 A I started in 2007.

22 Q What position did you start in?

23 A I started as an assistant conductor.

24 Q Can you give me kind of a short synopsis
25 of your progress through the Railroad to where you

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1 B. Gallup

2 are now?

3 A I started as an assistant conductor, I
4 qualified as a conductor, I then took a job as a
5 special duty conductor, I then became a
6 transportation manager, I became a lead
7 transportation manager, I then was a different type
8 of lead transportation manager, and now I'm the
9 superintendent of train service.

10 Q I noticed in taking these depositions that
11 there is a lot of titles that sound very similar to
12 me. If I get confused, I apologize for that.

13 A All good.

14 Q At the time of -- well let me strike that
15 and ask a different question.

16 Do you know who I'm referring to when
17 I refer to Steven Rosati?

18 A Yes, I do.

19 Q In looking at the documents it looks like
20 you had a fair amount of dealings with him?

21 A That's correct.

22 Q At the time you were dealing with him in
23 the late 2020 early 2021 timeframe, what were your
24 job duties at the time?

25 A I was the lead transportation manager of

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2 onboard revenue compliance. My job involved -- I
3 had five managers that worked under me and we were
4 involved in observing conductors and assistant
5 conductors for various reasons mainly pertaining to
6 fare collections, collecting fare onboard the
7 trains, but because my manager and myself observed
8 them onboard trains, it was also other things. Hand
9 signs, door operations, absence control, various
10 other things, but mainly focusing on the fare
11 collection side of things.

12 Q Earlier today I talked to Mr. Damato. Do
13 you know who he is?

14 A Stephen Damato?

15 Q Yes.

16 A Yes, I do.

17 Q I have also -- let me ask you this first:
18 What is your role in relationship to him?

19 A We are at the same level. We are both
20 superintendent level. What we deal with -- what our
21 job responsibilities are are different. He deals
22 with the crew office, absence control on a
23 superintendent level. My superintendent level deals
24 with the conductors, assistant conductors and ticket
25 collectors onboard the trains.

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2 Q So would I be correct then if in my head I
3 was thinking of you as a more of a person than the
4 conductors report to versus say Mr. Damato?

5 A In the Railroad I don't deal with
6 conductors every single day, but, yes, they all fall
7 under me. The railroad is a very self-managed
8 environment. Conductors report to where they are
9 supposed to report. They do their jobs on their own
10 without seeing any manager from my area or any area,
11 but they do all fall under me in the organization
12 chart currently, not in my old position but
13 currently.

Q What about in your old position?

15 A The way the Railroad works, the
16 superintendent of train service has two managers
17 that fall under them. One is the fare collection
18 manager which I was during this time and one is the
19 train service manager. Once again they both
20 supervise, observe the managers, and those managers
21 observe the conductors, but their responsibilities
22 and roles are a little different. They are both
23 groups and both lead managers are out watching
24 conductors, supervising conductors, observing
25 conductors.

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2 Q So at the time that these Rosati issues
3 were going on, what was your role in terms of
4 discipline of conductors and assistant conductors?

5 A So at that time when I worked under the
6 superintendent of train service, there was a large
7 portion of that time where the lead manager of train
8 service was out injured so I was sort of doing
9 double duty at one point, and sometimes the
10 discipline process it was issues related to fare
11 collection so it would have fallen under me anyway
12 because train service is fare collection. Because
13 some of the disciplinary issues involved fare
14 collection, I was involved and then because the
15 person that was in the train service lead position,
16 she was out injured at one point and then she came
17 back and was out injured again and then she ended up
18 retiring. I was doing double duty as both lead
19 managers.

20 Q I also see a number of references to I
21 believe it's Mike Bendick?

22 A Correct.

23 Q Do you know who that is?

24 A Yes, I do. He's superintendent of train
25 service when I was the lead.

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2 Q What would he have been in relation to you
3 at that time then?

4 A He was who I reported to at that time.

5 Q Your direct report?

6 A Correct.

7 Q Very good. Between the two of you if
8 there had been a disciplinary issue, how would the
9 duties between the two of you been divided up?

10 A He would have the ultimate say in the
11 discipline. I was there more of a guiding role
12 assisting him with maybe I knew more about the case,
13 maybe I knew more about the individual, I had been
14 on the trains more recently. I knew some people he
15 didn't know. My position was more out in the field
16 so I had more hands on and would support him and
17 give him information when he was making disciplinary
18 decisions.

19 Q So then I assume that you had a fair
20 number of communications with Mr. Bendick regarding
21 Rosati?

22 A That's right.

23 Q I have a couple of other people. Did you
24 ever communicate with Mr. Damato regarding
25 Mr. Rosati?

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2 A Not that I recall. Not that I recall.

3 Q What about Ms. Walsh?

4 MR. SHEA: Objection.

5 A I don't know Ms. Walsh.

6 Q Okay, that's fine. That's what I'm trying
7 to figure out.

8 Do you know a Mr. Eng, E-n-g?

9 A Are you referring to the former president
10 of the Railroad?

11 Q Yes.

12 A I know who he is. I don't know him. I
13 never dealt with him personally.

14 Q Is it fair to say you never would have
15 communicated directly with him about Mr. Rosati?

16 A That's correct. I never communicated with
17 him.

18 Q Did you ever communicate directly with a
19 Mr. Gallup regarding Mr. Rosati?

20 A I'm Mr. Gallup.

21 Q Sorry, I'm horrible with names.

22 So when you were dealing with
23 Mr. Rosati in your communications with Mr. Bendick,
24 would that have been -- let me ask it a different
25 way.

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2 Would you have had any decision
3 making in those communications or were you basically
4 reporting and Mr. Bendick would have gone from
5 there?

6 A More reporting to just whether if he had a
7 question about a specific role or a specific
8 observation that anybody would have seen. I was
9 more of a supporting role like that. It was
10 ultimately his decision and the trial officer's
11 decision as far as the discipline.

12 Q So obviously in looking at the documents
13 there were a number of disciplinary cases brought
14 against Mr. Rosati and so I'm guessing you spent a
15 fair amount of time with those; is that correct?

16 MR. SHEA: Objection.

17 A I remember -- I don't remember all of the
18 them. I remember a few different cases coming
19 through -- noncompliances as we refer to them coming
20 through.

21 Q Before his disciplinary issues began, did
22 you have contact with Mr. Rosati?

23 A As a manager that was out in the field I
24 come across him here and there onboard trains. As a
25 manager I was supposed to go out and ride a certain

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2 amount of trains. I know I dealt with him in
3 instances like that. I do know that I knew who he
4 was when the discipline started coming up. I knew
5 who he was.

6 Q Prior to these disciplinary issues
7 starting how would you describe him as an employee?

8 A My interactions were limited to five or
9 ten minutes on a train here or there. So it was
10 more like hey, how's it going. Typical small talk.
11 Oh, this train is busy, it's not busy. I don't
12 recall anything positive or really negative. See
13 you later, have a good day, stuff like that.

14 Q Fair to say he didn't really stick out on
15 either extreme?

16 A Yes. There is about a thousand conductors
17 and just I knew who he was.

18 Q Thinking back over the disciplinary issues
19 that you dealt with Mr. Rosati on, how would you
20 characterize him now?

21 A I haven't -- the last time I saw him was
22 at that one -- we did the statement of the facts.
23 How would I characterize him? I don't know.
24 Regular guy, I don't know how to answer that
25 question.

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2 Q Okay, okay, that's a fair enough answer.

3 I have some documents I'm going to
4 show you, I will go ahead and preview for you. Like
5 I said, your name came up on a lot of these
6 documents. I've got more than I've had with other
7 witnesses. However, I will tell you a lot of these
8 documents I'm trying to figure out what they are.

9 A Okay.

10 Q Helpfully, we will get through them fairly
11 quickly.

12 A Okay.

13 Q Let me open up the first one here.

14 (Gallup Exhibit A, Marked for Identification.)

15 I'm going to share my screen. Are
16 you able to read that okay?

17 A Yes.

18 Q I will give you a second to read it. Let
19 me know when you're done.

20 A Okay.

21 Q Do you recognize that document?

22 A Yes, I do.

23 Q What do you recognize it as?

24 A After myself and Mike Bendick met with
25 Steven Rosati, Mike Bendick instructed me to write

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2 an email to myself just a quick summary of something
3 that occurred a few weeks earlier.

4 Q Do you see in this email it refers to
5 TikTok and social media posts?

6 A I see that.

7 Q Do you recall that?

8 A I don't recall the actual details of the
9 actual post. I remember sitting in a conference
10 room discussing with Mr. Rosati some posts he made.

11 Q Do you recall what the issue with the
12 posts was?

13 A It involved him being in uniform in a few
14 different locations that were identifiable as
15 Railroad property. I don't remember the details of
16 what he was actually saying. It was clear he was in
17 Railroad uniform on Railroad property and possibly
18 at that point on an actual train that was in motion.

19 Q Do you recall if he was talking about the
20 Railroad or about other things?

21 A There were few of them. I don't remember
22 at this particular meeting because further down the
23 road there were other posts. I don't recall at this
24 meeting what the actual details of the post were.

25 Q At the end it says that he was receptive

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1 B. Gallup

2 to the conversation?

3 A Correct.

4 Q Can you tell me what you mean by that?

5 A Mr. Bendick a few times stated that,
6 listen, you can't be in uniform or on company
7 property making these. It's a violation of a few
8 rules. There is a rule about using a cellphone on a
9 train and Mr. Rosati at that point said I won't make
10 anymore and I will take down the ones that I
11 previously uploaded.

12 Q Do you know whether or not he actually did
13 that?

14 A I don't recall after this meeting if it
15 was done or not, no.

16 Q Do you recall whether you would have
17 checked in to whether or not he complied with those
18 instructions?

19 A I don't have TikTok. I don't recall what
20 happened after this meeting if I checked in or if
21 anybody instructed me to check in. I don't know.

22 Q Would you normally have checked in on an
23 employee's social media post in a situation like
24 this?

25 A No.

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2 MR. SHEA: Objection.

3 A Not randomly, no, unless somebody asked me
4 to.

5 Q Is it fair then to say that as part of
6 your job unless you're asked to, you don't routinely
7 follow employees' social media posts?

8 A That would be correct.

9 Q I'm going to share with you what I have
10 marked as Gallup Exhibit B.

11 (Gallup Exhibit B, Marked for Identification.)

12 Can you see that okay?

13 A Yes, I can.

14 Q This is a preview. I will tell you
15 several of the exhibits I'm going to share with you
16 appear to be email strings. When that's the case, I
17 will start at the bottom and go up so we can try to
18 get them in chronological order. If, at any time,
19 you need to have me scroll through the whole thing
20 so can you read it first let me know.

21 A Okay.

22 Q I will ask you first to read this and let
23 me know if you recognize it.

24 (Witness perusing document.)

25 A I read it. I don't recall it or recognize

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2 it. I know the people in the email thread.

3 Q Let me scroll up. Read the first of it if
4 you would if you recognize it.

5 A Sure.

6 (Witness perusing document.)

7 I don't recognize it or recall it. I
8 know the names involved.

9 Q You don't recall what it was referring to?

10 A I don't recall what it refers to. I know
11 what some of the terms are. I don't recall this
12 specific incident.

13 Q Easy enough. I'm sharing with you what
14 I'm going to call Gallup Exhibit C.

15 (Gallup Exhibit C, Marked for Identification.)

16 Let me scroll up a little bit more.
17 Can you see that okay?

18 A Yes, I can.

19 Q If you would go ahead and read it.

20 Let me know if you recognize it.

21 (Witness perusing document.)

22 A I see the names involved. I don't
23 remember what it was in reference to though.

24 Q Let me ask you this: It appears there is
25 an attachment referring to Rosati and an Antifa

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2 shirt of some sort. Do you see that?

3 A Yes. I'm looking at the name of the
4 actual subject. I know at one point somehow it came
5 to the department's attention that he was selling
6 some sort of shirts online. I believe it had
7 something to do with that. I don't remember what
8 the attachment or link was though.

9 Q So let me ask first, you mentioned that it
10 came to the department's attention. Do you have any
11 knowledge on how it came to the department's
12 attention?

13 A That I don't recall. I remember someone,
14 because I don't remember who, someone mentioned it.
15 The people involved in the thread, Michael Bendick,
16 Erin Sherrard and myself were told to look into it
17 or something to that nature.

18 Q Okay. Do you recall was there a specific
19 issue related to him -- I'm sorry to Rosati and
20 Antifa?

21 A I don't recall why -- how this shirt came
22 to our attention. We have a duel employment policy
23 and he was selling shirts online of a political
24 nature. I believe that's why. I don't recall who
25 the genesis of this.

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1 B. Gallup

2 Q Okay, great, thank you. We will come back
3 to the duel employment policy later. I have a
4 different exhibit related to that.

5 I'm going to show you what I will
6 call Gallup Exhibit D like dog.

7 (Gallup Exhibit D, Marked for Identification.)

8 Are you able to see that?

9 A Yes.

10 Q If you read through it let me know if you
11 recognize it.

12 (Witness perusing document.)

13 A Okay. Yes, I recognize what this is
14 about.

15 Q What do you recognize it to be about?

16 A In one of the social media posts or videos
17 that Mr. Rosati had, he made the reference to fuck
18 around find out. Somehow someone asked what that
19 meant and then I remember reading something in an
20 article very recently around that time about that
21 phrase. I had sent an Apple News article to
22 Ms. Sherrard and Mr. Bendick.

23 Q Okay. At this point would you say that
24 you were doing any sort of investigation of
25 Mr. Rosati?

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1 B. Gallup

2 A I was not, no. Someone asked about the
3 video again, but I was not actively investigating at
4 this point, no.

5 Q This mention the Proud Boys. Do you
6 recall if that group was ever an issue in any of
7 Mr. Rosati's disciplinary proceedings?

8 A I'm not sure what you're asking.

9 Q Let me rephrase that.

10 Do you recall in your conversations
11 with Mr. Bendick or anyone else for that matter
12 regarding Mr. Rosati whether the Proud Boys came up
13 as an issue with relation to Mr. Rosati?

14 A From my recollection the only time it was
15 was when he had that phrase on his videos and timing
16 wise I had been using the Apple News app on my phone
17 and an article popped up and that phrase was in
18 there.

19 Q Thank you. Before I bring up another
20 exhibit let me ask you in relation to the present
21 case regarding Mr. Rosati, did you do a search of
22 your email?

23 A Yes. A while back I was told to put all
24 emails key word Rosati, anything Rosati in a folder,
25 yes.

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1 B. Gallup

2 Q That's a search that you would have done
3 yourself?

4 A Yes.

5 Q I'm going to share with you -- we will
6 call this Gallup Exhibit E.

7 (Gallup Exhibit E, Marked for Identification.)

8 I will represent to you as soon as
9 you see this some of the emails that I received seem
10 to be in the format of the last several exhibits,
11 some are in this format. I'm not sure why. There
12 may be sometimes I ask you if you recognize a
13 document and you may not recognize the format, but
14 you may recognize the content. So if that's the
15 case if you would let me know I would appreciate
16 that. I assume you can see this?

17 A Yes.

18 Q If will you take a second and read it over
19 and let me know if you recognize it.

20 (Witness perusing document.)

21 A I read it. Once again I don't recognize
22 or recall it offhand, but based on the people
23 involved and some of the details I know what it's
24 about but I don't recognize it offhand.

25 Q Tell me what you think you recognize it to

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1 B. Gallup

2 | be?

3 A Based on the fact it's Mr. Bendick and
4 myself and Erin from the trial office and it says, I
5 may do discipline on Wednesday and Thursday. At one
6 point during Covid, Mr. Bendick and myself were
7 spending a lot time in offices in Babylon because of
8 social distancing and everything and when we do
9 discipline, we bring individuals in to sign their
10 discipline -- their trial waivers, Railroad trial
11 waivers. The fact it says I may do discipline, I
12 may bring in Rosati to sign I believe was him
13 signing something and the fact it looks like there
14 is two or one sort of social media policy. A lot of
15 times when an individual signs discipline when it's
16 related to Long Island Railroad or MTA policy in the
17 course of signing discipline, we can also provide
18 them with that policy as a reminder, as a reminder
19 here is what you violated. Please reread this over
20 again and make sure you're fully aware of it before
21 we let you go. He was coming to sign something and
22 we were giving him this paperwork.

23 Q Do you recall what he was going to sign
24 that day?

25 A No, I do not.

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1 B. Gallup

2 Q Can you tell me who Vinny is?

3 A There is two Vinnys it could be referring
4 to at the Railroad. There are two that are higher
5 up. One is Vincent Campossano. I don't remember
6 his position at this time. He's currently the
7 general superintendent of transportation. I don't
8 remember his position at this time. There is also a
9 Vinny Tessatore who is the head of the labor union
10 who represents conductors and assistant conductors.
11 Being that this is discipline, both of these Vinnys
12 may have been involved in it. They are higher than
13 Mr. Bendick and sometimes they work out discipline
14 above us.

15 Q It could have been either one of those?

16 A It's hard to figure out. Vinny Tessatore
17 represents conductors and assistant conductors and
18 Vincent Campossano, being his position sometimes he
19 gets involved with the discipline process and sort
20 of tells Mr. Bendick or myself here is what's going
21 on.

22 Q In the top email in the thread there the
23 first sentence says, Since Rosati is scheduled to
24 start the suspension on Monday.

25 Do you see that?

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1 B. Gallup

2 A Yes, I do.

3 Q Do you know what that was referring to?

4 A That's part of discipline. We sometimes
5 issue suspensions. The way it works at the Railroad
6 it could be an actual suspension on the street and
7 we also refer to it when you get docked pay, you're
8 working at 75 percent or a working day suspension.
9 I don't know offhand on the street or 75 percent. I
10 don't know how long based on this.

11 Q Do you recall whether both of those sorts
12 of suspensions were given to Mr. Rosati at different
13 times or not?

14 A Offhand I do not.

15 Q I'm going to show you what I'm going to
16 refer to as Gallup Exhibit F.

17 (Gallup Exhibit F, Marked for Identification.)

18 | Are you able to see that?

19 A Yes, I am.

23 A Scroll down.

24 Q Okay.

25 A Continue to scroll.

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1 B. Gallup

2 Q If it's okay with you, I will scroll down
3 to where it says Mr. Rosati.

4 A Okay. I read Mr. Rosati's stuff.

5 Q First I will ask you if you recognize
6 this?

7 A I don't recognize this, but once again
8 based on the names involved and looking at it, I
9 know what it is but I don't recognize this
10 particular time.

11 Q The main thing I'm wanting to do with this
12 document is have you help me interpret it. Would
13 you able to do that?

14 A I'm trying.

15 Q Starting with the first line where it says
16 Rosati, can you go through that line and tell me
17 what the different things mean?

18 A The first is his last name, first initial.
19 Then it says what we call IBM, his employee number.
20 Then it's a brief description of -- on the railroad
21 we call what we call a SAFER system, S-A-F-E-R.
22 It's how we document good or bad observations. This
23 is a quick summary of whatever SAFER rule. This
24 document is all noncompliance so it's what he
25 violated. The first line is he violated Safety Rule

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1 B. Gallup

2 900.3.2 and Rule 801 and then it goes over -- that's
3 the date that it was entered. It goes all the way
4 to the right, that's the trial number.

5 Q Let me repeat so I understand. The date
6 that's shown there is the date that it was entered,
7 not necessarily the date of the incident?

8 A Yes, I believe so.

9 Q And then the last column, that 032-21,
10 would that be the same as on a notice of trial there
11 is a trial number on there?

12 A That's correct.

13 Q Thank you. I'm going to show you what I'm
14 calling Gallup Exhibit G.

15 (Gallup Exhibit G, Marked for Identification.)

16 Can you see this okay?

17 A Yes.

18 Q If you would go ahead and read and let me
19 know if you recognize it.

20 (Witness perusing document.)

21 A Once again I don't recognize it or
22 remember it, but I can figure out based on the
23 people involved in and some of the terms what it
24 refers to.

25 Q Great. One of the things I want to ask

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1 B. Gallup

2 you about is some of the terms. Can you tell me
3 what a GN is?

4 A We have a book of rules we refer to as the
5 book of rules, there is also a timetable. All
6 different rules and regulations on how conductors,
7 engineers, other employees of the railroads have to
8 do their jobs. So what a GN is it refers to a
9 general notice and it's a paper revision. It's an
10 update to one of those documents. GN 6-35 means
11 that time table number six and then there is GN 6-1
12 changes some things. GN 6-2 changed some things.
13 There is the 35th GN came out and must have had some
14 change to Rule 801. We get these things and we put
15 in this big book of rules. She was asking me to
16 forward this GN because there was a change to the
17 rule she needed.

18 Q Thank you. So this big book of rules that
19 you refer to, is that something that each conductor
20 would have a copy of?

21 A In order to pass your assistant conductor
22 test, you have to be qualified as an assistant
23 conductor on the book of rules. You're given this
24 big book, the train department goes over this book.
25 It's big, it's hundreds of pages. They go over it

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1 B. Gallup

2 and then once you pass the test, you're out in the
3 field as an assistant conductor. It's one of your
4 job responsibilities to keep your book of rules and
5 timetable updated so when a new GN comes out for
6 your job, you're given time to check our bulletin
7 board and the GNs at the bulletin board, you take
8 it, you read it, you insert it in the book. Mr.
9 Rosati would have been required to have this GN in
10 his book and read and understood and signed off on
11 it that okay, I understand whatever GN 6-35 change
12 and update is to Rule 801.

13 Q Would he be expected to have that book
14 with him whenever he was working or how does that
15 work?

16 A You're required to carry that book of
17 rules and the timetable with you at all times on
18 property while you're working.

19 Q Thank you.

20 A You're welcome.

21 Q I'm going to put up what I'm going to call
22 Gallup Exhibit G1.

23 (Gallup Exhibit G1, Marked for Identification.)

24 MR. UHRICH: By counsel, this is a
25 question I have for you. So during this

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1

B. Gallup

2

morning's deposition we talked about things
that look like they were exhibits that were
missing and you asked me to put it in writing.
Probably about half the exhibits I have for
Mr. Gallup are things where it looks like the
attachments aren't there. The copies I have
don't have Bates numbers. So it occurred to me
there is a couple of ways I could do this. I
could send them to you as attachments in an
email or I could put them in as exhibits today
and refer to when I write to you by exhibit
numbers. Do you have a preference?

14

MR. SHEA: We don't have a preference. We
should say we produced these documents in
native. It looks like these were converted to
pdf internally by your office. I did check the
link in between these two depositions and what
we sent you were the actual Outlook MSG files.
This is not how we sent them.

21

MR. UHRICH: This would be a processing
issue on our end?

23

MR. SHEA: I believe so.

24

MS. PASRICHA: This is Priya. For the
record, the attachments should be attached to

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1 B. Gallup

2 the native as well. Let us know if you don't
3 have them but they should be there.

9 MR. SHEA: Thank you.

10 MR. UHRICH: I'm going to put up what I'm
11 going to refer to as Gallup Exhibit H.

12 (Gallup Exhibit H, Marked for Identification.)

13 BY MR. UHRICH:

Q Are you able to see that?

15 A Yes, I can.

16 Q This is one of those email strings again.
17 I will start at the bottom and ask you to read it.
18 As you need me to scroll up let me know.

19 A Okay.

20 (Witness perusing document.)

21 You can scroll up.

22 Q Okay.

23 A You can scroll up.

You can scroll up.

25 I read it.

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1 B. Gallup

2 Q First I will ask you if you recognize
3 this?

4 A No, I do not recognize this one.

5 Q Do you recall ever being involved in an
6 issue with Mr. Rosati not wearing a face mask?

7 A I don't recall being involved with it. I
8 do know whenever someone is put in for a
9 noncompliance in our SAFER system, I got an email
10 generated by that noncompliance so I remember seeing
11 it. In fact that was at the bottom of this email
12 thread, I remember seeing that. I wasn't involved
13 in any discussions between the individuals in these
14 emails here.

15 Q Okay. So am I understanding correctly
16 then that that block at the bottom that has a bunch
17 of emails, that's basically automatically generated
18 by the system?

19 A That's correct.

20 Q Do you recognize enough of the terminology
21 that I could ask to you explain some terms for me?

22 A I will do my best.

23 Q Great. About in the middle of the page
24 here are you able to see my cursor?

25 A Yes.

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1 B. Gallup

2 Q Right where my cursor is here the document
3 says, I spoke with the TM on the phone.

4 Do you know what a TM is?

5 A Yes. We refer to our transportation
6 managers, we refer to them as TMs, shorthand.

7 Q What exactly is a transportation manager?

8 A So similar -- how there is different
9 superintendents and different lead managers there is
10 different transportation managers. The progression
11 is transportation manager, above that is lead, above
12 that is superintendent. So there is transportation
13 managers that work in my area that go out and ride
14 trains and observe employees. There is
15 transportation managers that just work in the
16 terminals like Penn Station, Jamaica, dealing more
17 with the operations, but they also ride trains as
18 part of their going to and from work or part of
19 their job duties as well. It's a general term for
20 different specialties.

21 Q The paragraph above it it says, This is
22 the employee who served 30CDS for using sick time.

23 Do you know what 30CDS would mean?

24 A No. I don't know what that is referring
25 to.

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1 B. Gallup

2 Q And then in this area right here it says,
3 He also asked if we can send Rosati a direct order.

4 Do you know what they referred to
5 when they are saying a direct order?

6 A Yes. They are times where a manager or a
7 representative from the transportation department
8 has to give an employee a direct order to do
9 something. Sometimes it's out in the field where we
10 have to have them operating a train and if they
11 don't want to, we have to give them a direct order.
12 For those times we have to put it in writing we have
13 to give an employee a direct order to comply with
14 some sort of rule.

15 Q Okay, understood. Thank you.

16 I'm going to show you what I'm going
17 to refer to as Gallup Exhibit I.

18 (Gallup Exhibit I, Marked for Identification.)

19 Are you able to see that?

20 A Yes, I am.

21 Q If you would please read that over and let
22 me know if you recognize it.

23 (Witness perusing document.)

24 A Once again I don't recognize or recall it.
25 Based on the names and the terminology, I know what

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1 B. Gallup

2 it's in reference to.

3 Q What do you understand it to be in
4 reference to?

5 A At some point it came to our attention
6 that Mr. Rosati was operating a web page or website
7 that was selling t-shirts. To be employed at the
8 Railroad, you are allowed to have outside
9 employment, but there is forms you have to fill out
10 because there is certain regulations as to what type
11 of employment it can be. When this website was
12 discovered, it was discovered that Mr. Rosati had
13 not filled out the duel employment paperwork to get
14 the approval from HR.

15 Q Let me ask you first of all are you aware
16 of any sort of, I will call it a threshold, that it
17 would take to qualify as duel employment?

18 A No. We have a lot of rules and
19 regulations as far as hours of service, but besides
20 that I don't know. We are not really too involved
21 in the duel employment process.

22 Q Would a duel employment charge normally be
23 something that would come through your office?

24 A In my position now since I'm
25 superintendent of train service I would be involved.

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1 B. Gallup

2 At that point as the lead of fare collection, I
3 don't know if it would have come to -- I guess how
4 it was discovered. The best way I can say is I
5 don't know.

6 Q Fair enough. Do you know -- would say
7 having stuff that you were selling on Ebay, would
8 that count as duel employment?

9 MR. SHEA: Objection.

10 A I don't believe so. I'm not really
11 involved too much in the duel employment process.
12 When you fill out the application, I don't know who
13 approves it or anything like that or doesn't approve
14 it.

15 Q Based on your previous responses am I
16 correct in understanding that the issue here was his
17 failure to fill out a form prior to starting
18 whatever he was selling?

19 MR. SHEA: Objection.

20 A I believe so. I don't remember how it was
21 brought up or how it was discovered, but I believe
22 that was...

23 Q Do you recall any discussions related to
24 the content of what he was selling?

25 A I know it was t-shirts, but I don't

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1 B. Gallup

2 remember ever discussing with anybody the actual
3 content. Someone had a picture of a shirt he was
4 selling. He has a website, here is a picture of a
5 shirt. I don't recall anything further.

6 Q Do you recall earlier we looked at a
7 couple of emails that referred either to Antifa or
8 to -- I think it was fuck around and find out was
9 the phrase?

10 A Yes.

11 Q Do you recall those emails?

12 A Yes.

13 Q Do you know if those two were part of this
14 duel employment discussion?

15 A I believe one of the shirts, the fuck
16 Antifa shirt was a shirt someone saw that was on
17 sale on his website and that's one of the shirts
18 that either was somehow linked to his website or he
19 was wearing it or promoting it. I think that's how
20 the existence of the website came to.

21 Q Do you recall we also talked at an earlier
22 exhibit about a meeting that you and Mr. Bendick had
23 with Mr. Rosati regarding some social media posts
24 that he was making while on Railroad property or in
25 uniform?

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1 B. Gallup

2 A Yes.

3 Q Do you recall if those discussions had
4 anything to do with this duel employment situation?

5 A I don't recall what posts at that point we
6 were referring to or what TikToks or whatever they
7 were.

8 Q I'm going to show you what I'm going to
9 call Gallup Exhibit J.

10 (Gallup Exhibit J, Marked for Identification.)

11 Are you able to see that now?

12 A Yes, I am.

13 Q If you would review that and let me know
14 if you recognize it.

15 (Witness perusing document.)

16 A Once again I don't recognize it. I
17 recognize some of the people in the emails.

18 Q Do you recall why you would have sent this
19 email?

20 A I'm trying to go back and read who it went
21 to.

22 Q Sure. Take your time.

23 A Offhand, no. I don't know why it was sent
24 or what...

25 Q Okay. In the first line here it refers to

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1 B. Gallup

2 Gassert?

3 A Correct.

4 Q Do you know what that is referring to?

5 A I believe it's referencing an assistant
6 conductor whose last name was Gassert. That was in
7 some of the videos and posts along with Mr. Rosati.

8 Q Okay. Then at the end of that line you
9 typed the word interesting; do you see that?

10 A Yes.

11 Q Do you recall why you said interesting?

12 A I think because it was -- he was in -- he
13 was actually on a platform as well. I don't recall
14 uniform or not. Based on the reference it was
15 interesting he was making a video or in a video in
16 Jamaica.

17 Q Okay. I'm going to show you Gallup
18 Exhibit K.

19 (Gallup Exhibit K, Marked for Identification.)

20 Are you able to see that?

21 A Yes, I am.

22 Q Go ahead and read that over and let me
23 know if you recognize it please.

24 (Witness perusing document.)

25 A Okay, I read it.

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1 B. Gallup

2 Q Do you recognize this?

3 A Once again I don't recognize it offhand,
4 but based on the terminology and the names involved,
5 I can figure out what it's in reference to.

6 Q What do you believe it to be in reference
7 to?

8 A At some point one of the videos on one of
9 the social media platforms Mr. Rosati was in uniform
10 and somehow it was believed he was actually not only
11 in uniform, but he was working his job. He was
12 actually on duty, not on a break or anything. The
13 video actually was like a selfie type where you
14 could see a sign behind him on the platform and we
15 determined that the video shows the time 10:04, you
16 can see the time on the station platform. It goes
17 further, it says he was on Job 651. That's one of
18 our job assignments and when you look at that job,
19 he was supposed to be at Hicksville in between
20 trains at that time so we figured out he was on duty
21 in uniform working on that video.

22 Q Do you recall what the video was about?

23 A That I do not recall, no.

24 Q You mentioned that it appeared to be a
25 selfie-type video, correct?

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1 B. Gallup

2 A Yes. It was -- he was holding the phone
3 in his hand and it was clearly his face. You could
4 see the stripes of our uniform. I believe you got
5 yourself a logo and you could see the platform
6 behind him where it says Hicksville and the time and
7 the next train coming.

8 Q Do you recall were there any issues with
9 the content of the video or was it simply the fact
10 he was on duty?

11 A I don't recall what the content was at
12 this point. I don't recall how we were made aware
13 of the video, just that he was on duty, on his
14 cellphone making a video.

15 Q Okay. Up at the top here I guess it's
16 Ms. Kustoff says, Plus the one on the train.

17 MR. SHEA: Objection.

18 Q Do you know what that refers to?

19 A No, I do not.

20 MR. UHRICH: At this point we have been
21 going for about an hour. Why don't we take a
22 short break if we could.

23 (Whereupon, a short recess was taken.)

24 BY MR. UHRICH:

25 Q I'm going to go ahead and show you what

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1 B. Gallup

2 I'm calling Gallup Exhibit L. Are you able to see
3 that okay?

4 (Gallup Exhibit L, Marked for Identification.)

5 A Yes.

6 Q If you would please read that and let me
7 know if you recognize it.

8 (Witness perusing document.)

9 A Yes.

10 Q Do you see recognize this email or this
11 document?

12 A No, I do not.

13 MR. SHEA: Craig, I want to note it looks
14 like there isn't a date on this document.

15 MR. UHRICH: That's correct. The ones
16 that are in this format none of them have
17 dates. I will have to go back and check on
18 that again.

19 BY MR. UHRICH:

20 Q Let me ask by the context do you recall
21 any sort of conversation of this nature?

22 A No. I recognize the names, but I don't
23 know what this is in reference to.

24 Q Do you know who Tim Haig is?

25 A Yes, I do.

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1 B. Gallup

2 Q Who is he?

7 Q Okay. I see in the second sentence it
8 says, I explained that the decision was way above
9 Mr. Bendick, myself and you.

10 A Yes, I see that.

11 Q Do you recall what that was referring to?

12 A No, I don't recall why Tim Haig was asking
13 Erin -- I don't remember what he was asking and why
14 I was asking Erin this.

15 Q I'm going to show you what I'm calling
16 Gallup Exhibit M like Mary.

17 (Gallup Exhibit M, Marked for Identification.)

18 Are you able to see that okay?

19 A Yes.

20 Q If you would read it for me and let me
21 know when you need me to scroll down?

22 A Okay, scroll down.

23 Q Okay.

24 A I 'm done.

25 Q My first question is: Do you recognize

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1 B. Gallup

2 this document?

3 A I do not recognize this particular
4 document, no.

5 Q Did you in fact notify, I guess,
6 Mr. Rosati on January 21st of 2021, that he was
7 taken out of service?

8 A Yes, I did.

9 Q Was that an in-person meeting?

10 A Correct.

11 Q Do you recall what that was for?

12 A It was a statement of facts we were doing
13 with the employee. I don't recall the exact reason
14 or what was being asked of him, but at the
15 conclusion of this statement of facts, we took him
16 out of service so I do remember that being in
17 person.

18 Q Could you explain to me what you mean when
19 you say a statement of facts?

20 A At the Railroad there is times where we
21 conduct -- it's not a trial, it's an exploratory
22 interview with the employees regarding various
23 operational incidents, rules, violations. I recall
24 it being a statement of facts with Mr. Rosati on
25 this day. I don't remember the exact details of

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1 B. Gallup

2 what we were asking him, but at the conclusion we
3 did take him out of service.

4 Q Would I be correct in understanding then
5 that when you're referring to a statement of facts,
6 you're referring to you trying to get facts from
7 him, not the other way around?

8 A That is correct.

9 Q Okay. Is that part of a formal
10 investigation?

11 A They are held for various reasons.
12 Sometimes it's just a result of an operational
13 incident. Like right now we are dealing with
14 derailment and there is going to be a statement of
15 facts tomorrow for the crew involved in the
16 derailment to find out where they were when things
17 happened, who else was around. Other times it's
18 between two employees we do a statement of facts
19 when there is personal issues between them. There
20 is various reasons why we hold these statement of
21 facts.

22 Q Okay. Are those statement of facts, are
23 they generally recorded?

24 A There is the trial officer for the
25 Railroad or there is trial officers there. There is

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1 B. Gallup

2 some sort of recording device present there that's
3 then transcribed.

4 Q Do you recall if this particular statement
5 of facts with Mr. Rosati was recorded and
6 transcribed?

7 A I believe so.

8 Q It says that it's an investigation into
9 conduct unbecoming an employee of the Long Island
10 Railroad.

11 Do you recall what sort of conduct
12 that would have been?

13 A I don't recall what the actual statements
14 or the questions were offhand, no.

15 Q Do you have an understanding -- we
16 talked -- let me withdrawn that question and start
17 again.

18 We talked earlier today about some
19 other incidents with Mr. Rosati not wearing a face
20 mask, duel employment, not being on the train when
21 he was supposed to.

22 Do you have an understanding on if
23 there is any sort of hierarchy between any of those
24 charges and conduct unbecoming an employee?

25 MR. SHEA: Objection.

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1 B. Gallup

2 A I don't recall what the exact conduct
3 unbecoming, what the actual investigation was so I
4 don't recall if it was related to any of those other
5 incidents or not offhand.

6 Q Okay. Do you recall when he was taken out
7 of service this day, do you recall whether that was
8 with or without pay?

9 A I don't recall, but when we use the term
10 out of service it's without pay.

11 Q Is there a different term that you would
12 use for with pay?

13 A We normally use the term relieved with
14 pay. It's a code in our payroll system or crew
15 management system.

16 Q Okay, thank you. I'm looking at something
17 here. I'm going to show what I'm marking as Gallup
18 Exhibit N.

19 (Gallup Exhibit N, Marked for Identification.)

Are you able to see that?

21 A Yes, I am.

22 Q I will scroll to the top and ask you to
23 read through it and let me know when I need scroll
24 down.

25 (Witness perusing document.)

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1 B. Gallup

2 A Scroll down.

3 Q Okay. So you were not one of the authors
4 on this email, but it seems to refer to you and Mike
5 asking for a script if you need to take Rosati OOS,
6 which I assume is out of service. Do you recall
7 that conversation?

8 A I don't recall the conversation, but I
9 recall being given this document.

10 Q Would you normally be given a script when
11 you take someone out of service?

12 A I have done it before and this script -- I
13 have never had to give somebody a direct order
14 though.

15 Q Okay. In this line it says, Asking for a
16 script if they need to take Rosati out of service.

17 Do you see that?

18 A Yes, I do.

19 Q Do you recall when you went into that
20 meeting on January 21st, was there a question on
21 whether or not you would be taking Rosati out of
22 service?

23 A When we went into this statement there was
24 no real direction given. At one point it was told
25 to me that I might have to give him a direct order.

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1 B. Gallup

2 If he refused to answer the direct order, I would
3 have to take him out of service.

4 Q Do you recall what that direct order was
5 for?

6 A Just if he refused to answer any questions
7 in the statement of facts.

8 Q I see, okay. Do you recall if he refused
9 to answer any questions?

10 A I don't recall if I had to give him a
11 direct order. No, I don't.

12 Q Do you recall how the decision was made
13 that he needed to be taken out of service?

14 A I don't recall how it was made or who
15 informed me of it. At some point I was told you're
16 taking him out of service.

17 Q Do you recall who told you that?

18 A I don't recall, no.

19 Q Was anyone in the room besides you and
20 Mr. Rosati?

21 A I believe someone from the union was in
22 the room. Next to the trial office there is a room
23 where the union representatives sit in when there is
24 a statement of facts between little breaks. I don't
25 remember who, but I believe there were one or more

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1 B. Gallup

2 union officials in there, but I can't recall
3 offhand.

4 Q Where it says Mike and Ben were asking, do
5 you know who Mike is?

6 A I don't know offhand.

11 (Gallup Exhibit O, Marked for Identification.)

12 A Can you scroll?

13 Q Okay.

14 A Okay.

15 Q Do you recall this email exchange?

16 A I don't recall offhand, no.

17 Q Do you recall a flash drive related to
18 Mr. Rosati?

19 A Yes, I do.

20 Q What do you recall about that?

21 A At one point I was told to put some of the
22 emails I had and some photos or screen shots onto a
23 flash drive and provide it to Ms. Sherrard in the
24 trial office.

25 Q Do you recall was this prior to him being

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1 B. Gallup

2 taken out of service?

3 A I don't recall if it was prior or after,
4 no.

5 Q Okay. Do you know where that flash drive
6 is now?

7 A No, I do not.

8 Q Where did you deliver it to?

9 A I delivered it to the trial office,
10 Ms. Sherrard. I don't know if I gave it to her
11 specifically, but the trial office.

12 Q Since they are somewhat related, I'm going
13 to mark this as Gallup Exhibit 01.

14 (OOS Script-Insubordination email Exhibit 01, Marked
15 for Identification.)

If you would go ahead and read that.

17 (Witness perusing document.)

18 A Okay, I read it.

19 Q Do you recognize this?

20 A Yes, I do.

21 Q What do you recognize it as being?

22 A At one point I was -- when I was putting
23 the documents onto the thumb drive, it was on my
24 phone and messages were popping up on my phone like
25 notifications and I realized they were in the screen

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1 B. Gallup

2 shots so I said hold on, I had to re-save some of
3 the documents with the no notification on it.

4 Q This thumb drive that you're referring to,
5 would that be the same as the flash drive in the
6 previous exhibit?

7 A Yes.

8 Q I wanted to make sure.

9 Do you recall when the last time that
10 the thumb drive or flash drive would have been in
11 your possession is?

12 A Offhand, no, I do not.

13 Q I'm going to show you Gallup Exhibit 02.
14 (Gallup Exhibit 02, Marked for Identification.)

15 Are you able to see that?

16 A Yes, I am.

17 Q If you read that and let me know if you
18 recognize it?

19 A Yes, I recognize this.

20 Q What do you recognize it to be?

21 A There was a problem with the thumb drive.
22 The way the Railroad computers work there is weird
23 passwords so someone, I forget who, set up some sort
24 of a shared drive on the computers that I put on
25 when I was trying to get the thumb drive to work.

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1 B. Gallup

2 Q Same thing as before?

3 | A Yes.

4 Q Do you know if this SharePoint location
5 still exists?

6 A That I don't know.

7 Q I asked you earlier about searching your
8 emails; do you recall that?

9 A Yes, I do.

10 Q When you searched your emails, did you
11 search on this SharePoint location as well?

12 A I would have to look at -- no, I don't
13 know. I don't know how to get to that anymore.

14 Q Do you recall would there be any documents
15 that you think might be on that SharePoint that
16 would not have been in your email?

17 A I don't believe so.

18 Q I'm showing you what I will mark as Gallup
19 Exhibit P like Paul.

20 (Gallup Exhibit P, Marked for Identification.)

21 I will let you read that.

22 A Yes, I recognize it.

23 | Q What do you recognize it to be?

24 A We were having a problem with that same
25 thumb drive and it was password protected and at o

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55

1 B. Gallup

2 point we couldn't get the password to work so I had
3 to reset the password. That was me letting Erin
4 know what the new password was.

5 Q At the beginning when it says, I had to
6 encrypt the USB.

7 A The way all our computers work is because
8 there is safety sensitive information everything is
9 encrypted, it's protected. So in order to get into
10 it, I had to make a password.

11 Q Normally when there is a disciplinary
12 issue and it goes to the trial people, do you
13 normally have to make them a thumb drive?

14 A Normally it's a noncompliance where a
15 manager observed it or it's an operation incident
16 where there is physical evidence right there. I've
17 never had to do anything like this before.

18 Q Thank you. Just so I can keep them in
19 order I'm going to show you another few exhibits
20 fairly quickly. This is Exhibit Gallup Q.

21 (Gallup Exhibit Q, Marked for Identification.)

22 If you would read that and let me
23 know if you recognize it.

24 A No, I don't recognize it.

Q Do you know would there have been another

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1 B. Gallup

2 flash drive at some point that you're aware of?

3 A All I recall is that one flash drive.

4 Q I'm showing you what I've marked as Gallup
5 Exhibit R.

6 (Gallup Exhibit R, Marked for Identification.)

7 I'm going to go to the bottom so you
8 can read in order.

9 A Scroll up a little bit.

10 | Scroll up.

11 | Scroll up.

12 | Okay.

13 Q Do you recognize this conversation?

14 A I recognize the beginning of it. The rest
15 of it I wasn't involved in it.

Q Let's go back to the beginning of it.

17 This one at the very bottom, is that the one that
18 you recognize?

19 A That's correct.

Q What do you recognize that to be?

21 A Someone said Mr. Rosati's Instagram is
22 back up and that I let Michael Bendick know that I
23 heard his Instagram was back up and running.

24 Q So the previous exhibits where you did the
25 statement of facts and he was taken out of service,

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1 B. Gallup

2 they said that happened January 21st of 2021,
3 correct?

4 A That's correct.

5 Q It looks like this email that you sent is
6 a little over four months later, three months later?

7 A Yes, it appears to be.

8 Q Do you know why you would have checked
9 into this three months after he was taken out of
10 service?

11 A At that point I think he was -- either his
12 trial was going on or we heard it was possibly going
13 on. I don't remember the details exactly and it had
14 gone, the web page had gone down. Someone said, I
15 don't remember who, referenced that it was back up,
16 the videos were back up so I was letting Mike know
17 it's back up.

18 Q We are getting close. I'm showing you
19 what I've marked as I believe Exhibit S.

20 (Gallup Exhibit S, Marked for Identification.)

21 If you would take a look and let me
22 know if you recognize that?

23 A Yes, I do.

24 Q What do you recognize that as?

25 A Someone brought it to my attention that

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1 B. Gallup

2 there was a Reddit thread and Mr. Rosati was in the
3 Reddit thread.

4 Q When you said someone brought it to your
5 attention, do you have any recollection who that
6 was?

7 A I don't. I don't remember who.

8 Q Do you recall whether it would have been
9 an employee or a member of the public?

10 A I don't recall at this point, no.

11 Q Do you recall why you were interested in
12 that Reddit thread?

13 A Like I said, I don't remember who it was,
14 but someone said, Hey, did you see, Steve is on
15 Reddit. Something to that effect.

16 Q Was there a time in when you were needing
17 to basically keep tabs on his activities?

18 A It wasn't part of my job responsibility or
19 job description. I wasn't tasked with it. Once in
20 a while someone above me would say anything --
21 anymore videos or did he take down the video or
22 something like that. It wasn't like everyday or
23 every week I would check up on him.

24 Q I didn't quite hear that, did you say it
25 was or was not?

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1 B. Gallup

2 A It wasn't, was not.

3 Q You said that -- if I understood correctly
4 you said it came from various people above you. Do
5 you recall who any of those people would have been?

6 A Sometimes it would be Mr. Bendick,
7 sometimes it would be someone above him and it would
8 be passed through him. Sometimes it would be the
9 trial office. I couldn't tell you how it would
10 filter down to me.

11 Q This would be what I'm calling Exhibit T.
12 (Gallup Exhibit T, Marked for Identification.)

15 (Witness perusing document.)

16 A Yes, I recognize this one.

17 Q What do you recognize it as?

18 A Right around this same time as the Reddit
19 form, it was brought to my attention that there was
20 a conductor or appeared to be a conductor at a rally
21 and he was on News 12. I went on the website and I
22 found it and it appeared to be Mr. Rosati.

23 Q Do you recall if he was in uniform?

24 A At this one I don't recall the details of
25 what he was wearing or anything, no.

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1

B. Gallup

2

Q Do you recall why it would have mattered
whatever was on the news, this rally?

4

A I believe at this particular video he was
chasing someone across the street. He was combative
with somebody and that's why when it was discovered
he was an employee of the Railroad, it was brought
to our attention. It wasn't that he was at the
rally, it was his behavior at the rally.

10

11

Q Since you brought up his behavior at the
rally let me ask you, I have seen some emails
talking about his attitude or whether or not he was
confrontational or those sorts of things.

12

13

When you had to meet with him, what
was your opinion on his attitude?

14

15

MR. SHEA: Objection.

16

17

A The interactions with him were all pretty
professional and pretty polite. The only time I
recall him having an attitude or an issue was the
time I had to take him out of service. He got
combative and very angry.

18

19

Q Tell me what you mean by combative and
very angry?

20

21

A From what I recall he got up, he pushed
something, he cursed, he was yelling, screaming. I

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1 B. Gallup

2 don't recall the exact, are you f'ing kidding me,
3 this is crazy. Hand motions, stuff like that. He
4 jumped up out of his seat when I told him.

5 Q I assume you're referring to when you told
6 him he was out of service?

7 A Correct.

8 Q Prior to you telling him he was out of
9 service how was his attitude?

10 A In the statement of facts he wasn't
11 combative, he was almost like nonchalant about his
12 behaviors, like so not combative, but he was very
13 specific and we had to ask him questions numerous
14 times to get him to answer some questions. I don't
15 know how to describe it any other way.

16 Q Could you give me an example?

17 A It's so long ago I don't remember. We
18 kept having to rephrase questions for him because he
19 was -- the way he was answering it wasn't -- I don't
20 know how to explain it.

21 Q I understand. Let me ask it this way: Do
22 you have an opinion on whether he was understanding
23 the questions he was asked?

24 MR. SHEA: Objection.

25 A I don't know. That's why we had to reask

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1

B. Gallup

2

a few questions. I don't recall what the details
3
were.

4

Q Do you recall if he stated that he wasn't
5
understanding?

6

A I know in part of the -- going to
7
statement of facts, that trial officer reads a
8
prewritten statement and says if you don't
9
understand anything ask. I don't recall him asking
10
for things to be rephrased. I don't recall. It
11
could have been or not. I don't know.

12

Q From what you observed did you have the
13
impression that he was being obstructionist?

14

A Once or twice it seemed like yes, he was
15
trying -- I don't know if this is the right term to
16
use, like playing games with the way the question
17
was asked and the way he was using words trying to
18
avoid answering the question.

19

Q You don't recall what any of those
20
questions were?

21

A Offhand, I don't know.

22

Q Okay. I'm going to show you what I'm
23
calling Gallup Exhibit Q. If you take a look at
24
that and let me know if you recognize it?

25

(Witness perusing document.)

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1

B. Gallup

2

A Are you able to scroll down.

3

Q There is nothing below.

4

5

A Offhand, no. I don't recall what this was.

6

7

8

9

Q It looks like this was about ten days after he was taken out of service by you. Do you recall it says it's an old Twitter account. Do you recall why you might have been looking for that?

10

A I don't have Twitter so offhand, no.

11

12

Q It says that you were sent the screen shot. Do you recall who would have sent it to you?

13

14

15

A I do recall now. A number I don't know sent me a screen shot of a Twitter, Tweet, Twitter post from Mr. Rosati or appeared to be Mr. Rosati.

16

17

Q You said it was a phone number you didn't recognize?

18

A Didn't recognize, no.

19

20

21

Q Thank you. I'm going to show you what I marked as Exhibit V and I will let you read through it.

22

(Gallup Exhibit V, Marked for Identification.)

23

A Scroll down.

24

Q Okay.

25

A Scroll down.

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1 B. Gallup

2 Q That was the end of it. Do you recall
3 this conversation?

4 A I don't recall the conversation, no.

5 Q Do you recall anything going on with
6 Mr. Rosati in relationship to a Covid clinic?

7 A Yes, I do.

8 Q What do you recall?

9 A At one point there was a video, a social
10 media post. I don't remember the details of him at
11 a Covid clinic, like a line at a Covid clinic with a
12 bullhorn or yelling at people on line at a Covid
13 clinic.

14 Q Do you recall if he was wearing a uniform
15 or identified as a Railroad employee?

16 A I don't recall the details of what he was
17 wearing at this point, no.

18 Q We talked earlier about a SharePoint that
19 there were some Rosati videos on; do you recall
20 that?

21 A Yes.

22 Q Do you recall if there was more than one
23 of those?

24 A More than one SharePoint or more than one
25 video?

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65

1 B. Gallup

2 Q More than one SharePoint?

3 A Not that I recall, no.

4 Q Let me skip this exhibit then.

5 This I've marked as Gallup Exhibit W.

6 (Gallup Exhibit W, Marked for Identification.)

7 If you would take a look and let me
8 know if you recognize this?

9 A I don't recognize it, no.

10 Q Do you recall ever seeing a website called
11 Unfiltered Conservative?

12 A Yes, I do.

13 Q Do you recall what that was?

14 A It was -- someone brought to our attention
15 that that was a website or user name that was used
16 by Steve Rosati.

17 Q Do you recall -- you had talked earlier
18 about a website where he was selling t-shirts, I
19 believe?

20 A Yes

21 Q Do you recall if that's the same or a
22 different website?

23 A It was a different website. From my
24 recollection, the Unfiltered Conservative had links
25 or posts to the t-shirt website.

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66

1 B. Gallup

2 Q Do you recall what these links that you
3 would have attached would have been?

4 A Offhand, no. I don't know.

5 Q Okay. This will be Gallup Exhibit X.

6 (Gallup Exhibit X, Marked for Identification.)

I will scroll down a little bit. If you would read that and let me know if you recognize it.

10 (Witness perusing document.)

11 A It appears to be that same screen shot
12 that I got from the earlier exhibit just being sent
13 to other people now or different people.

14 Q Okay. Are you referring to the Unfiltered
15 Conservative?

16 A No. The one from the Twitter account
17 before he worked here.

18 Q The one from the unknown phone number?

19 A Yes, correct.

20 Q These are the same ones?

21 A I believe so, yes.

22 Q I'm going to show you Gallup Exhibit Y.
23 Again there is not a lot on this. I will scroll
24 down through it.

25 (Gallup Exhibit Y, Marked for Identification.)

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1 B. Gallup

2 A Okay, can you scroll?

3 Q It's blank for a while. Do you recall
4 being part of this conversation?

5 A No.:

6 Q I believe that's the end of my exhibits.
7 So just a couple of more general questions.

13 A He was in talks with the union and I
14 believe that at one point it was told to the union
15 it looks like that's what we are going to do. I
16 don't recall if he was ever told that specifically
17 or not.

18 Q Do you recall who the union people would
19 have been?

20 A Based on that time period it could have
21 been E.J. Chino or Eugene Chino or Dominic
22 Amandelori. I don't recall offhand. They are both
23 the union people involved with the statement of
24 facts at that point.

25 Q You don't happen to know how to spell Adam

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1 B. Gallup

2 Amandelori, do you?

3 A No.

4 Q So when you told him that he was being
5 taken out of service, did he mention anything about
6 being surprised that it was without pay?

7 A I don't recall. Like I said, I know he
8 jumped up and was very agitated. I don't know what
9 he said or didn't say at that point.

10 Q Did you have any contact with Mr. Rosati
11 after that time?

12 A Not that I can recall, no. I don't think
13 so.

14 Q Without telling me about any conversations
15 with your lawyers obviously, do you recall any
16 conversations about Mr. Rosati after he was taken
17 out of service?

18 A I just remember that once we finally heard
19 that he was terminated, I remember someone saying
20 did you hear they terminated Mr. Rosati. That's the
21 only one I can really recall.

22 Q That particular conversation, did the
23 person say anything beyond did you hear that they
24 terminated him?

25 A I don't remember who told me it happened,

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1 B. Gallup

2 no. I think we all thought it was going to be
3 dragged out.

4 Q Is it fair to say that you have dealt with
5 multiple disciplinary actions where someone was
6 taken out of service?

7 A I have taken people out of service before,
8 yes.

9 Q If you had to give me a ballpark, is that
10 one or two? Is it five or ten? Is it a couple of
11 hundred?

12 A Probably between five and ten.

13 Q In your experience in dealing with those
14 sorts of disciplinary issues how would Mr. Rosati
15 compare?

16 As far as his reaction or as far as --

17 0 All the above.

18 A In the other cases they were all
19 operational incidents or drug test failures so a
20 little bit more subdued because they knew they
21 either failed the drug test or they had a major
22 incident where they knew it was coming so they were
23 a little bit more subdued.

24 Q It wouldn't be an apples and apples
25 comparison?

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1 B. Gallup

2 A No. It was vastly different
3 circumstances.

4 Q Fair enough. Have you had to discipline
5 anyone else related to the duel employment policy?

6 A Not that I recall.

7 Q What about anyone else you had to
8 discipline related to posting videos in their
9 uniform or on railroad property?

10 A Nothing in uniform that I recall. Nothing
11 on railroad property that I recall, no.

12 Q I believe that's all the questions I have
13 for you.

14 MR. SHEA: We have no further questions.

15 THE REPORTER: Mr. Shea, will you be
16 purchasing a copy of this transcript?

17 MR. SHEA: Yes.

18
19 (Time noted: 4:27 p.m.)

20 _____
21 BENJAMIN GALLUP

22
23 Subscribed and sworn to before me this _____ day
24 of _____ 2023.

25 _____, Notary Public.

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1 B. Gallup
2 I N D E X

4 WITNESS
5 BENJAMIN GALLUP

7 EXAMINATION BY PAGE
8 MR. UHRICH 4

10 | E X H I B I T S

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1

B. Gallup

2

3

E X H I B I T S (Continued)

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2

C E R T I F I C A T I O N

3

4

STATE OF NEW YORK)

5

) ss.:

6

COUNTY OF NEW YORK)

7

I, RUTHAYN SHALOM, a Court Reporter
and Notary Public within and for the State
of New York, do hereby certify:

That the witness whose deposition
is hereinbefore set forth, was duly sworn
by me, and that the within transcript is a
true record of the testimony given by such
witness.

I further certify that I am not
related to any of the parties to this action
by blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 20th day of September, 2023.

22

23

24

Ruthayn Shalom

25

RUTHAYN SHALOM

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2

ERRATA SHEET

3

4

NAME OF CASE: ROSATI v LIRR, et al.

5

DATE OF DEPOSITION: September 7, 2023

6

NAME OF DEPONENT: Benjamin Gallup

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18

BENJAMIN GALLUP

19

Subscribed and sworn to before me
this _____ day of _____, 2023
_____, Notary Public.

20

21

22

MY COMMISSION EXPIRES:

23

24

25

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